SUPREME COURT OF THE UNITED STATES

JAMES A. RHODES ET AL. *v.* LARRY STEWART

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 88-139. Decided October 17, 1988

PER CURIAM.

After entry of a judgment for the plaintiffs in a suit by two prisoners under 42 U. S. C. § 1983, the District Court for the Southern District of Ohio, Eastern Division, ordered the defendants to pay plaintiffs' attorney's fees pursuant to 42 U. S. C. § 1988. There is no entitlement to attorney's fees, however, unless the requesting party prevails; and by the time the District Court entered its judgment in the underlying suit one of the plaintiffs had died and the other was no longer in custody. In this posture, the plaintiffs were not prevailing parties under the rule we set forth in *Hewitt* v. *Helms*, 482 U. S. —— (1987), and the Court of Appeals for the Sixth Circuit erred in affirming the award of fees by the District Court.

I

On January 17, 1978, while in the custody of the Ohio Department of Rehabilitation and Correction, Albert Reese and Larry Stewart filed a complaint alleging violations of their First and Fourteenth Amendment rights by officials who refused them permission to subscribe to a magazine. On April 2, 1981, the District Court issued an opinion and an order, later amended in respects no longer pertinent to the case. The court ruled that correctional officials had not applied the proper procedural and substantive standards in denying the inmates their request, and ordered compliance with those standards.

Two months later, the District Court entered an award of fees in favor of the attorneys for Reese and Stewart in the amount of $5,306.25. The Court of Appeals for the Sixth

Circuit affirmed. We granted certiorari, vacated the judgment, and remanded the case to the Court of Appeals for further consideration in light of *Hensley* v. *Eckerhart*, 461 U. S. 424 (1983). *Rhodes* v. *Stewart*, 461 U. S. 952 (1983). On remand from the Court of Appeals, the District Court confirmed its earlier award.

None of the opinions or orders cited thus far made reference to, or showed awareness of, two salient facts: Reese died on February 18, 1979; and Stewart, the sole respondent now before us, was paroled on March 15, 1978, and given a final release from parole on January 17, 1980. In consequence, when the District Court issued its original order on April 2, 1981, neither plaintiff was in the State's custody. For reasons that remain unexplained, the petitioners here did not raise this matter until their appeal of the District Court's order after remand.

A divided Court of Appeals upheld the award of fees, concluding that the mootness of the claim when the judgment was issued did not undermine respondent's status as a prevailing party eligible for attorney's fees. *Stewart* v. *Rhodes*, 845 F. 2d 327 (CA6 1988). In an unpublished opinion, the majority characterized the relief plaintiffs had received as declaratory relief. The panel majority noted our recent holding in *Hewitt* v. *Helms*, *supra*, that a plaintiff must receive some relief on the merits of his claim before he can be said to have prevailed within the meaning of § 1988. It observed, however, that the plaintiff in *Hewitt*, unlike Stewart, had not won a declaratory judgment, and concluded that the declaratory judgment issued in this case justified the granting of attorney's fees.

II

The Court of Appeals misapprehended our holding in *Hewitt*. Although the plaintiff in *Hewitt* had not won a declaratory judgment, nothing in our opinion suggested that the entry of such a judgment in a party's favor automatically

renders that party prevailing under § 1988. Indeed, we confirmed the contrary proposition:

> "In all civil litigation, the judicial decree is not the end but the means. At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant that the judgment produces—the payment of damages, or some specific performance, or the termination of some conduct. Redress is sought *through* the court, but *from* the defendant. This is no less true of a declaratory judgment suit than of any other action. The real value of the judicial pronouncement—what makes it a proper judicial resolution of a 'case or controversy' rather than an advisory opinion—is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff.*" 482 U. S., at —— (slip. op. 5) (emphasis in original).

A declaratory judgment, in this respect, is no different from any other judgment. It will constitute relief, for purposes of § 1988, if, and only if, it affects the behavior of the defendant towards the plaintiff. In this case, there was no such result. The lawsuit was not brought as a class action, but by two plaintiffs. A modification of prison policies on magazine subscriptions could not in any way have benefited either plaintiff, one of whom was dead and the other released before the District Court entered its order. This case is thus controlled by our holding in *Hewitt*, where the fact that the respondent had "long since been released from prison" and "could not get redress" from any changes in prison policy caused by his lawsuit compelled the conclusion that he was ineligible for an award of fees. 482 U. S., at ——. The case was moot before judgment issued, and the judgment therefore afforded the plaintiffs no relief whatsoever. In the absence of relief, a party cannot meet the threshold requirement of § 1988 that he prevail, and in consequence he is not entitled to an award of attorney's fees.

Certiorari is granted, and the decision of the Court of Appeals is reversed.

It is so ordered.